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10/689,639

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Richard Fearn

4051

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EXAMINER

FIGUEROA, ADRIANA

ART UNIT

PAPER NUMBER

3637

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DELIVERY MODE

08/07/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/689,639

**Applicant(s)**

FEARN, RICHARD

**Examiner**

Adriana Figueroa

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 6-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 12 is objected to because of the following informalities: the phrase "comprises of the step of.." is incorrect. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 6, 7, 9-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pruett (US 4,854,542) in view of Mohss (US 5,593,623) and further in view of Chatelain (US 5,580,480).

Regarding claims 6, 9, 14, 15 Pruett discloses a flexible tube form element (10), said tube form element having a protruding portion (16) extending outwardly therefrom formed as a longitudinal tab; securing the protruding portion of the tube form element to a first vertical support member (14), (Figures 3-6).

Pruett does not disclose the tube form being formed from a joined woven fabric sheet. However, Mohss teaches a tube form (3) being formed from a joined woven fabric sheet, (Figures 1-3), (Column 3, Lines 65-66). Therefore, it would have been obvious to a person having ordinary skill in the arts at the time of the applicant's

invention to modify the tube form of Pruett to be of a joined woven fabric sheet as taught by Mohss in order to provide a very flexible and easy to store and transport tube form.

Mohss also discloses the method steps of selecting and cutting the length of the flexible tube form from a larger length of flexible tube form element , (Figure 1), (Column 3, Lines 5-8); and substantially filling the flexible tube form element with a flowable and settable foundation material, (Figure 2):

Pruett modified by Mohss does not disclose the step of bracing the first vertical support member, thereby supporting the flexible tube form element in an upstanding position. However, Chatelain teaches the step of bracing the first vertical support member (42), (Figure 7), (Column 2, Lines 65-67, Column 3, Lines 1-3). Therefore, it would have been obvious to a person having ordinary skill in the arts at the time of the applicant's invention to modify the tube form of Pruett and Mohss to include the step of bracing the first vertical support element as taught by Chatelain in order to secure the tube form in a vertical position.

Regarding claim 7, Pruett does not disclose the step in which the flexible tube form element is left in place on the concrete surface. However, Mohss teaches the step in which the flexible tube form element (3) is left in place on the concrete surface, (Column 4, Lines 23-25). Therefore, it would have been obvious to a person having ordinary skill in the arts at the time of the applicant's invention to modify the steps of Pruett to include leaving in place the flexible tube form element as taught by Mohss in order to provide additional protection to the outer concrete surface.

Regarding claim 10, Pruett modified by Mohss and Chatelain discloses as discussed above and further discloses the step of securing the protruding portion (16) of the flexible tube form element (10) to a second vertical support member (14), (Figures 3-6).

Regarding claims 11 and 12, Pruett modified by Mohss and Chatelain discloses as discussed in claim 6 but does not disclose the step of bracing the first vertical support member further comprising the step of positioning the first vertical support member and therewith the flexible sheet form element in the upstanding position and the step of bracing the second vertical support member. However, Chatelain discloses the step of bracing the first vertical support member (42) further comprising the step of positioning the first vertical support member and therewith the flexible sheet form element in the upstanding position and the step of bracing the second vertical support member (42), (Figure 7). Therefore, it would have been obvious to a person having ordinary skill in the arts at the time of the applicant's invention to modify the steps of Pruett modified by Mohss to include the positioning of the first vertical support member and bracing the second vertical support member as taught by Chatelain in order to provide a stronger support to the concrete form.

Regarding claim 13, Pruett modified by Mohss and Chatelain discloses the steps of securing the protruding portion (16) of the flexible tube form element (10) to the first and the second vertical support members (14) and further includes the step of sandwiching the protruding portion between the first and second vertical support members, (Figures 3, 4).

Regarding claim 17, Pruett modified by Mohss and Chatelain discloses as discussed in claim 14; Chatelain also teaches the step of driving a stake (39) into the ground, (Figure 7); the modified steps of Pruett, Mohss and Chatelain would have the stake adjacent the protruding portion (16) of the flexible tube form element (10); and the stake would be attach to the protruding portion (16). Therefore, it would have been obvious to a person having ordinary skill in the arts at the time of the applicant's invention to modify the steps of Pruett modified by Mohss to include the step of driving the stake into the ground as taught by Chatelain in order to better secure the flexible tube form in a vertical position.

Regarding claim 18, Pruett modified by Mohss and Chatelain discloses as discussed above and further discloses the step of reinforcing the protruding portion (16) with a second vertical support member (14), (Figures 3-6). Chatelain also discloses the step of the step of bracing the second vertical support member (42), (Figure 7). Therefore, it would have been obvious to a person having ordinary skill in the arts at the time of the applicant's invention to modify the steps of Pruett modified by Mohss to brace the second vertical support member as taught by Chatelain in order to provide a stronger support to the concrete form.

Regarding claim 20, Pruett modified by Mohss and Chatelain discloses the step of reinforcing the protruding portion (16) with the first vertical support member (14) comprises the step of attaching the first vertical support member (14) to the protruding portion (16) of the flexible form element (10), (Figures 3-6).

Regarding claims 21 and 24, Pruett modified by Mohss and Chatelain discloses as discussed in claims 6 and 14; Mohss also teaches the step of unrolling the flexible tube form element (3), (Figure 1).

Regarding claims 23 and 26, Pruett modified by Mohss and Chatelain discloses as discussed in claims 6 and 14; Mohss also teaches the step of substantially filling the flexible tube form element with the flowable and settable foundation material further comprises distending the flexible tube form element with the flowable and settable foundation material, (Figure 2), (Column 3, Lines 40-45).

3. Claims 16 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pruett (US 4,854,542) in view of Mohss (US 5,593,623), Chatelain (US 5,580,480) and further in view of Cardwell (US 4,790,509). Pruett modified by Mohss and Chatelain discloses as discussed in claims 15 and 18, but does not disclose the first and second vertical support members are braced with a strut. However, Cardwell teaches a strut (60), (Figure 1). Therefore, it would have been obvious to a person having ordinary skill in the arts at the time of the applicant's invention to modify the steps of Pruett modified by Mohss and Chatelain to include a struss as taught by Cardwell in order to provide a stronger support structure.

4. Claims 22 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pruett (US 4,854,542) in view of Mohss (US 5,593,623), Chatelain (US 5,580,480) and further in view of O'Flaherty (US 2, 505,426). Pruett modified by Mohss and

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Chatelain discloses as discussed in claims 6 and 14, but does not disclose the step of unfolding a folded length of the flexible tube form element. However, O'Flaherty teaches the step of unfolding a folded length of the flexible tube form element (5), (Figure 3).

Therefore, it would have been obvious to a person having ordinary skill in the arts at the time of the applicant's invention to modify the steps of Pruett modified by Mohss and Chatelain to have the the flexible tube form element folded as taught by O'Flaherty in order to make it easy to store and transport.

### ***Response to Arguments***

5. Applicant's arguments filed 05/30/2007 have been fully considered but they are not persuasive.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Pruett teaches a flexible tube form (Column 2, Lines 26-29; Mohss teaches a tube form (3) being formed from a joined woven fabric sheet, (Figures 1-3), (Column 3, Lines 65-66). Therefore, it would have been obvious to a person having ordinary skill in the arts at the time of the applicant's invention to modify the tube form of Pruett to be of a joined woven fabric



sheet as taught by Mohss in order to provide a very flexible and easy to store and transport tube form.

In response to applicant's argument that Chatelian does not show the steps of securing the tab of the form to the vertical members. Examiner notes that the prior art of Chatelian teaches the step of bracing the first vertical support member; Pruett teaches the step of securing the tab of the form to the vertical member.

In response to applicant's argument that Cardwell or O'Flaherty do not teach the method of securing a tab on a vertical member of a flexible form applicant can not show nonobviousness by attacking the references individually where, as here, the rejection is based on a combination of references. In the instant case, Cardwell teaches a strut used to support a vertical member; O'Flaherty teaches the step of unfolding a folded length of the flexible tube form element.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

***Conclusion***

**6. THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adriana Figueroa whose telephone number is 571-272-8281. The examiner can normally be reached on Monday-Friday 8:30am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AF /AF  
08/06/2007

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